

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CHINO VALLEY UNIFIED SCHOOL
DISTRICT, ALHAMBRA UNIFIED
SCHOOL DISTRICT, LONG BEACH
UNIFIED SCHOOL DISTRICT and
GARVEY ELEMENTARY SCHOOL
DISTRICT

OAH CASE NO. 2012080536

ORDER GRANTING ALHAMBRA
UNIFIED SCHOOL DISTRICT'S
MOTION TO DISMISS

On September 7, 2012, Alhambra Unified School District (Alhambra Unified) filed a motion to dismiss the second issue in Student's request for due process (complaint). Student and the other school districts named in the caption did not file responses to the motion to dismiss.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of title 42 United States Code, or any pendent State claims.

DISCUSSION

The second issue Student raises in her complaint is that each of the named school districts, including Alhambra Unified, violated her rights under Section 504 of the Rehabilitation Act of 1973, Section 1983 of title 42 United States Code, and the Unruh Act, a State of California civil rights statute. OAH does not have jurisdiction over such claims. Accordingly, the second issue in Student's complaint is dismissed as to Alhambra Unified.

ORDER

Alhambra Unified's motion to dismiss Student's second issue is granted as it pertains to Alhambra Unified.¹ The matter will proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

Dated: September 13, 2012

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

¹ Long Beach Unified School District and Chino Valley Unified previously filed motions to dismiss the second issue as it pertained to them, and both motions were granted by OAH. Nothing precludes Garvey Elementary School District from filing its own motion to dismiss claims in the complaint that it believes should be dismissed if it wishes to do so.